SUPREME COURT, U. S.
MICHAEL RODAK, JR.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-860

THOMAS MINYARD, TED SPURLOCK, CLAIR PLATT, JAY REESE, APACHE COUNTY BOARD OF SUPERVISORS and TOM SHIRLEY, LARRY STRADLING and ARTHUR LEE, constituting the members thereof and MARGARET LEE, in her official capacity as Clerk of the Apache County Board of Supervisors,

Petitioners,

vs.

TOM SHIRLEY,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona

Brief of Respondent in Opposition

PAUL F. ECKSTEIN
222 North Central Avenue
Phoenix, Arizona 85004
Attorney for Respondent

Of Counsel:
JACK E. BROWN
GEORGE P. VLASSIS
LAWRENCE A. RUZOW
BROWN, VLASSIS & BAIN
222 North Central Avenue
Phoenix, Arizona 85004

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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OPINION BELOW

The opinion of the Supreme Court of Arizona is not yet officially reported, but is unofficially reported in 513 P.2d 939. Copies of this opinion, the Order denying rehearing and

*The caption of the Petition in this case is incorrect in that it designates James A. McDonald as a member of the Apache County Board of Supervisors. At the time the Petition was filed Tom Shirley was the Supervisor. With this substitution, the case is left in the anomalous posture of Tom Shirley suing Tom Shirley and perhaps explains why the caption was not changed.

the judgment of the lower court carrying out the mandate of the Arizona Supreme Court are appended to the Petition.

JURISDICTION

Petitioners state that this Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). Inasmuch as this section applies to petitions for certiorari from *Federal courts of appeal* and the Petition is directed at the action of the Arizona Supreme Court, jurisdiction clearly does not lie under 28 U.S.C. § 1254(1). Moreover, under Respondent's reading of the applicable statutes, Petitioners have not presented the issues in a manner sufficient to give this Court jurisdiction under any statute. To be sure, the mere assertion that a Federal or State statute is unconstitutional would appear to give this Court jurisdiction pursuant to 28 U.S.C. § 1257(3), but, as will appear more fully below, the "constitutional" issues raised by Petitioners are more imagined than real.

QUESTIONS PRESENTED

1. Is a Navajo Indian who resides on the Navajo Indian Reservation a citizen of the United States within the meaning of 8 U.S.C. § 1401(a)(2)?

2. Do the equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States require the State of Arizona to prohibit a Navajo Indian who resides on the Navajo Indian Reservation from holding the Office of County Supervisor?

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioners claim that this case properly raises issues under the Fifth and Fourteenth Amendments of the Constitution of the United States. Despite Petitioners' vigorous efforts to turn this case into a constitutional *cause celebre*,

the controversy can be properly resolved without resort to the Constitution.

STATUTES INVOLVED

The relevant Federal and State statutes are cited in the Petition at page 4 and set forth in the appendix thereto.

STATEMENT OF THE CASE

In the summer of 1972, Respondent Tom Shirley, a qualified elector of the State of Arizona and an enrolled member of the Navajo Tribe residing within the exterior boundaries of the Navajo Indian Reservation, decided to run for the Office of County Supervisor for Apache County Supervisorial District No. 3 which includes the area where Respondent resides. Respondent filed the necessary nominating petitions, and in September, 1972, won the Democratic Party primary. On November 7, 1972, Respondent was elected County Supervisor for Apache County Supervisorial District No. 3, receiving 3,169 votes to 1,105 received by Thomas A. Minyard, the losing candidate and also one of the Petitioners herein. Despite this overwhelming victory at the polls, through the various acts and omissions of Petitioners as set forth below, Respondent was prevented from serving in the office to which he was duly elected until October 15, 1973.

On November 13, 1972, the Board of Supervisors of Apache County met, as it is required to do under Arizona law, for the purpose of canvassing the results of this and other general elections in Apache County held the previous week. The meeting lasted less than a couple of hours and in fact was adjourned without a Certificate of Election being issued to Respondent or any other person.

Taking advantage of this adjournment, Petitioners Thomas E. Minyard, Ted Spurlock, Clair Platt and Jay Reese (hereinafter collectively referred to as "Minyard") (a) commenced an action in the Superior Court of the State of Arizona in and for the County of Apache, entitled *Thomas E. Minyard, et al. v. Apache County Board of Supervisors, et al.* (Action No. 4727 in the Superior Court of the State of Arizona in and for the County of Apache) to prevent Respondent from being certified as the duly elected County Supervisor for Apache County Supervisorial District No. 3 and (b) obtained an *ex parte* temporary restraining order from the Honorable D. L. Greer, Judge of the Superior Court of the State of Arizona in and for the County of Apache, restraining the members of the Board of Supervisors of Apache County and the Clerk thereof from issuing to Respondent a Certificate of Election to the Office of County Supervisor for Apache County Supervisorial District 3. After the restraining order was obtained, the Apache County Board of Supervisors resumed its meeting on the next day (November 14, 1972) and issued Certificates of Election to all *other* County candidates elected in the November 7, 1972 general election.

The gravamen of Minyard's complaint was that Respondent, a Navajo Indian living on the Navajo Reservation, should be prohibited from holding public office because he "is immune from Service of Process and is not subject to the jurisdiction of state or federal courts of Arizona, and for the further reason that [Respondent] is not subject to state or county taxation nor are the overwhelming majority of his constituents" as a result of which, it is alleged, his holding of the office "would infringe upon and violate the constitutional rights of [Minyard] by violating the due proc-

ess clause of the 14th and 5th Amendments of the United States Constitution." (Complaint—Par. 3.)

Because of the Federal constitutional issues which appeared on the face of the complaint, Respondent removed the pending action to Federal Court by filing a Petition for Removal on November 20, 1972. On December 11, 1972, Minyard filed a Motion for Remand to the Arizona Superior Court, and, after some discovery, the filing of various legal memoranda and oral argument, on March 21, 1973, the Honorable C. A. Muecke, Judge of the United States District Court for the District of Arizona, granted Minyard's Motion for Remand, concluding "that as presented this case is inappropriate for determination by this Court since interpretation of a State Statute not necessarily involving a constitutional issue was involved. Thus, assuming jurisdiction, this case is ripe for abstention."

On April 16, 1973, Respondent filed a Motion for Judgment on the Pleadings and to Vacate Temporary Restraining Order. In response to this motion, Minyard filed a Motion for Summary Judgment as well as a Motion for Preliminary Injunction. On April 24, 1973, the Honorable Laurance T. Wren, Judge of the Superior Court of the State of Arizona, sitting for the Honorable D. L. Greer (who had been previously disqualified), granted Minyard's Motion for Preliminary Injunction in order to "preserve the status quo" and directed Minyard's attorneys to prepare the necessary formal order. Thereafter, on May 24, 1973, Judge Wren signed the Findings of Fact, Conclusions of Law and Preliminary Injunction and the Preliminary Injunction Order preliminarily enjoining Petitioners Apache County Board of Supervisors, the members thereof and its Clerk from issuing a Certificate of Election for County Supervisor of Apache County Supervisorial Dis-

trict No. 3 to Respondent, purportedly on the grounds, *inter alia*, that:

(a) Minyard did not have an adequate remedy at law;

(b) Minyard had established a *prima facie* case that he would prevail on the merits of the matter since:

(i) Respondent was immune from service of civil process while on the Navajo Reservation;

(ii) Respondent did not own any real or personal property subject to taxation by the State of Arizona; and

(c) Minyard would suffer irreparable harm and injury if the Preliminary Injunction was not granted.*

From this Preliminary Injunction, Respondent sought relief by Special Action from the Arizona Supreme Court.

On May 29, 1973 Respondent filed his Petition for a Special Action with the Arizona Supreme Court. On that same date Chief Justice Jack D. H. Hays ordered the Petitioners to show cause on June 12, 1973 why the relief requested in the Petition — the seating of Respondent as a county supervisor — should not be granted. On June 6, 1973 Petitioners' answering memorandum was filed with the Arizona Supreme Court and on June 12, 1973 oral argument was heard by the Arizona Supreme Court.

Almost three months later, on September 7, 1973, the Arizona Supreme Court granted the relief sought by Respondent and in doing so recognized that Respondent had fully complied with the requirements prescribed by law,

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*Interestingly enough, although Petitioners requested Judge Wren to conclude that Respondent was not a citizen, he refused to do so and in fact found that Respondent was a qualified elector, thus implicitly concluding that he was also a citizen. Accordingly, there is no court—not even a trial court in the State of Arizona—which has held that Respondent is not a citizen.

e.g., he was a qualified elector of the supervisorial district which he sought to represent pursuant to A.R.S. § 11-211 (A). Petitioners sought a rehearing and stay and on October 2, 1973 the Arizona Supreme Court denied the motion for rehearing as well as the request for a stay and thereupon the Court's mandate issued. On October 12, 1973 the Judgment was entered by the Apache County Superior Court requiring that a Certificate of Election be awarded to Respondent.

It was not until October 15, 1973, over eleven months after he had won the election in question, that Respondent took his rightful place on the Board of Supervisors of Apache County, Arizona.

ARGUMENT

Shorn of all slogans and irrelevancies, the gravamen of Petitioners' claim is that a Navajo Indian who resides on the Navajo Indian Reservation should be constitutionally prohibited from holding public office in the State of Arizona even though he may fully comply with all the statutory requirements for the office. However inappropriate it was for Petitioners to request that the Arizona courts rewrite the statutory requirements for public office, it is even more so to make such a request of the Supreme Court of the United States.

What Petitioners really complain of is that for the first time a person who resides on an Indian Reservation has succeeded to county office in a county which had theretofore been exclusively controlled by a non-Indian minority. If Petitioners are intent on preserving their political power, the appropriate appeal is not to the Supreme Court of the United States but rather (1) to the electorate through the established electoral system or (2) to the legislature of the

State of Arizona to redraw the County lines to exclude those voters who they consider their political antagonists (that is, to exclude those portions of the County which contain Reservation land). Just such a bill to redraw the County line was introduced in the Arizona State Legislature last year and is reprinted in the Appendix hereto.

If there is an equal protection or due process claim here, it is that Respondent was denied the public office to which he was elected for ten months and that others like him have been, over a period of one hundred years, systematically and consciously prohibited from voting and holding public office.

I. The Decision Below Is Clearly Correct.

A. A Reservation Indian Is a Citizen of the United States Pursuant to 8 U.S.C. § 1401(a)(2) and a Resident of the State of Arizona.

As incredible as it may appear in the year 1973, the thrust of Petitioners' argument is that Indians who reside on reservations established by the United States are not citizens and therefore ineligible to vote and hold public office. From the very first pleadings in this case, Petitioners have cited *Elk v. Wilkins*, 112 U.S. 94 (1884) for the proposition that as a matter of constitutional law Indians are not and cannot be citizens of the United States.* No matter how many times Petitioners may say so, *Elk v. Wilkins* did *not* hold that Indians are not and cannot be citizens of the

*Respondent argued, and evidently the Arizona Supreme Court concurred, that for Petitioners to prevail, *Harrison v. Laveen*, 67 Ariz. 337, 196 P.2d 456 (1948) (holding that reservation Indians were entitled to vote in State elections) had to be overruled. In refusing to overrule *Harrison v. Laveen*, the Arizona Supreme Court *implicitly* found that reservation Indians are citizens of the United States, for one cannot vote under Arizona law unless he is a citizen of the United States and a resident of Arizona. See A.R.S. § 16-101.

United States as a matter of constitutional law. *Elk v. Wilkins* merely held that in the *absence* of express conferral of citizenship by Congress, an Indian could not become a citizen merely by voluntarily rejecting his tribal affiliation. Quoting from Mr. Justice Taney's opinion in *Scott v. Sandford*, 60 U.S. 691 (1856), the Court in *Elk v. Wilkins* noted that Indians "may without doubt, like the subjects of any foreign government, be naturalized by authority of congress, and become citizens of a state, and of the United States." 112 U.S. at 101. This is precisely what happened in 1924 when Congress passed the Citizenship Act, 43 Stat. 253 (8 U.S.C. § 1401).

As noted in the Petition, 8 U.S.C. § 1401(a)(2) expressly declares Indians to be citizens of the United States, and while Petitioners may prefer to ignore the state of the law since 1884, every court that has had occasion to consider the matter has held that Reservation Indians are citizens of the United States. See *Halbert v. United States*, 283 U.S. 753 (1931), *Ex Parte Green*, 123 F.2d 862 (2nd Cir. 1941), *Totus v. United States*, 39 F.Supp. 7 (E.D.Wash. 1941). Even the Arizona Superior Court which prevented Respondent from taking his seat for ten months did not agree with Petitioners' argument that Respondent is not a citizen of the United States.

Not only are American Indians citizens but also they are residents of the state in which they reside. *United States v. Nice*, 241 U.S. 591 (1916), *Boyd v. Nebraska*, 143 U.S. 135 (1892), *Porter v. Hall*, 34 Ariz. 408, 271 P. 411 (1928),* *Harrison v. Laveen, supra*, and *Deere v. New York*, 22 F.2d 851 (N.D.N.Y. 1927). In any event, the question of whether

*While the *Porter* case held that Indians did not have the right to vote, this decision was not based upon citizenship or residency grounds but rather upon the mistaken belief that Indians were persons under guardianship. 271 P. at 415-419. Indians were given the right to vote in Arizona in 1948.

a Reservation Indian is a resident of the State of Arizona is not a Federal constitutional question and is not properly before this Court.

B. The Equal Protection and Due Process Clauses of the Fourteenth Amendment Do Not Require the State of Arizona to Prohibit a Reservation Indian from Holding the Office of County Supervisor.

A.R.S. § 11-211(A) sets out the affirmative requirements for holding the office of County Supervisor. That section provides as follows:

> ". . . In each county having a population of less than two hundred thousand as determined by the latest United States decennial census, a board of supervisors shall consist of three members . . . *who shall be qualified electors of their supervisorial district* and who shall be elected at a general election at which the president of the United States is elected." [Emphasis supplied.]

While Petitioners do not specifically request this Court to find that A.R.S. § 11-211(A) is unconstitutional, such a request is certainly implicit in their argument. In recent years, the Federal Government has restricted the State's freedom to impose limitations on the franchise and the right to hold public office, but in this case it is not the State of Arizona which seeks to restrict the right to hold office, but rather Petitioners who seek a narrower interpretation than that allowed by State law. The general right of States to prescribe qualifications for voting and impliedly office-holding are set out in *Lassiter v. Northampton County Board of Elections,* 360 U.S. 45 (1959) where the question at issue was a literacy test (literacy tests having since been abolished by Congress). In that case literacy tests were upheld and the Court said:

> "The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised . . ." 360 U.S. at 50.

In fact, in some respects, Arizona has been more liberal in permitting people to vote than the Federal Government. For example, the 1912 amendment of Article VII, Section 2 of the Arizona Constitution provided that women could exercise the franchise. This may be compared with the Nineteenth Amendment to the United States Constitution which granted the right of women to vote, but did not do so until 1920. There seems to be no challenge made to the right of a State to extend the franchise beyond that which may be the minimum required by Federal law. Similarly, it is important to note that prior to the enactment of the Twenty-sixth Amendment to the United States Constitution, lowering the voting age to 18, several States had already lowered the voting age below 21.

The question at issue in this action is the related right to hold office. In the recent case of *Bullock v. Carter,* 405 U.S. 134 (1972), the United States Supreme Court overturned the Texas primary election filing fee system and held, *inter alia*:

> "The initial and direct impact of filing fees is felt by aspirants for office, rather than voters, and the Court has not heretofore attached such fundamental status to candidacy as to invoke a rigorous standard of review. [footnote omitted] However, the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical correlative effect on voters." 405 U.S. at 142-143.

Given the relationship between the right to vote and the right to become a candidate for and hold public office, and further given the fact that the State of Arizona has chosen not to make any distinction between those rights with respect to the Office of Supervisor, it must follow that Petition-

ers' argument is ill conceived since Respondent *does* meet all the State requirements for County Supervisor.

Petitioners nevertheless claim that Respondent cannot hold the Office of County Supervisor because (i) he is immune from service of civil process while on the Navajo Reservation and (ii) he does not own any real or personal property subject to taxation by the State of Arizona. Even assuming the correctness of these legal propositions as abstract matters, it hardly follows that one who is immune from service of civil process or one who does not own real or personal property subject to taxation should be prohibited from holding public office. As noted above, the requirements for the Office of County Supervisor are clearly set out in the statute. The courts cannot impose additional requirements In any event, when one examines the legal conclusions upon which this argument is premised, it is evident that these conclusions themselves are either erroneous or beside the point.

With respect to the claim that a person must own taxable property to hold public office, it should be noted that the Supreme Court of the United States has made it quite clear that one need not own property to vote in local bond elections. *Cipriano v. City of Houma,* 395 U.S. 701 (1969), *City of Phoenix, Arizona v. Kolodziejski,* 399 U.S. 204 (1970) and *Kramer v. Union Free School District No. 15,* 395 U.S. 621 (1969). The test for holding public office should be no different. Moreover, to the extent that Respondent owns any property off the Reservation he pays taxes on that property just like any other person. He pays no real property taxes at the present time because he does not own any real property. The real property on which Respondent resides is owned by the United States Government in trust for the Navajo Tribe which, in turn, has granted a homesite

lease to Respondent. While Respondent is immune from income taxes from income earned *on* the Reservation under the recent ruling of the Supreme Court of the United States in *McClanahan v. State Tax Commission of Arizona,* .... U.S. ...., 93 S. Ct. 1257 (1973), he must pay State income taxes on any income earned *off* the Reservation. Indeed, Respondent himself pays income tax to the State of Arizona on his salary as County Supervisor. Moreover, Petitioners misstate the law with respect to Federal taxation of Indians for, like all other citizens, Indians pay Federal taxes. See *Comn'r of Int. Rev. v. Walker,* 326 F.2d 261 (9th Cir. 1964).*

Carried to its logical extreme, if Petitioners prevail any person who enjoys a tax exemption would be prohibited from running for public office. The fact of the matter is that the Federal and State tax laws do contain certain inequities, but merely because a person does not bear the full burden of the taxes imposed by law does not mean that he does not have an interest in the affairs of his government and should be prohibited from holding public office. Indeed several of Petitioners themselves enjoy certain tax advantages and writeoffs through their ownership of cattle which are not enjoyed by persons whose sole source of income is a salary. While this may constitute an inequity in the tax system, it hardly follows that a cattle owner should be prohibited from holding office. Respondent knows of no case which requires that an individual be subject to taxes or other laws himself in order to vote for such taxes or

*Petitioners' statement at page 8 that "the (non-Indian) minority of Apache County residents. . .pay all of the county taxes" is grossly in error. There is absolutely no evidence in the record (nor could there be any) to support this hyperbole, and, in fact, the public records of Apache County demonstrate that the County derives *more* in tax revenues from sources on the Navajo Reservation than it spends there.

laws either as a citizen in an election or as a public office holder. The nonsense of "taxation without representation" as expressed by Petitioners is essentially that they and their "constituents" for whom they presume to speak lack sufficient voting strength in order to have their will become law. Even assuming that non-Indians are in the minority in Apache County and that no non-Indian candidate would ever win an election contest (which has not heretofore been the case), surely no conceivable reading of constitutional law can require the minority be given the right to govern.

As to the claim that Respondent would not be subject to service of civil process for acts of wrongdoing committed while serving as a County Supervisor, it is clear that if Respondent is guilty of any malfeasance or misfeasance while in office, he can be recalled just like any other officer under A.R.S. § 19-201 *et seq.* without being served process. Moreover, even assuming that Respondent cannot be served with process on the Navajo Reservation for acts committed off the Reservation, under A.R.S. § 38-291(7) if he does not perform the duties of his office for three consecutive months his office shall be deemed vacant. See *McCluskey v. Hunter,* 33 Ariz. 513, 266 P. 18 (1928) where the Court stated:

> ". . . [I]f plaintiff ceased to discharge the duties of the office for three consecutive months without being sick or absent from the State by permission of the Legislature the office became vacant at the expiration of this period, *ipso facto,* as a result of his own act, and necessarily no hearing or order of removal was required . . ." 266 P. at 23.

Thus, if Respondent chooses not to come off the Reservation for fear of being served, he will be removed from office automatically.

The question the Court ought to ask is *not* whether Respondent is subject to service of civil process but whether

he can be removed, as any other officer, if he does not carry out his duties properly. The answer to that question is a resounding yes. Moreover, Petitioners are in error when they state that under Arizona law a Reservation Indian cannot be served with process for an act committed *off* the Reservation. No Arizona appellate court has ruled on that precise point and, within the past nine months, the Supreme Court of the State of New Mexico has ruled that a Navajo *is* subject to service of process for an act committed off the Reservation in the State of New Mexico. See *State Securities, Inc. v. Jimmie and Ruby Anderson,* ....N.M. ...., 506 P.2d 786 (1973).

Finally, as noted by Chief Justice Ross in his dissent in *Porter v. Hall, supra* (the Arizona case which held that Reservation Indians were *not* entitled to vote, a case which was subsequently overruled by *Harrison v. Laveen, supra*):

> "It may be that these plaintiffs and others in their situation, should not, as a matter of public policy, be granted the franchise, since they are not entirely emancipated from federal control, nor amenable while on the reservation to the state laws; but as the laws are now written it seems to me they are entitled to register and to vote." 271 P. at 419.

As Justice Ross would have done in 1928 and as the Supreme Court of Arizona did in *Harrison v. Laveen* in 1948 in vindicating the position taken by Chief Justice Ross, the proper function of this Court is that of applying the law as it stands, leaving to the Arizona Legislature the duty of changing the requirements for the Office of County Supervisor, if in its ultimate wisdom such a change is deemed appropriate.

II. There Is No Conflict of Decision.

As pointed out above, not only is *Elk v. Wilkins* not in conflict with the decision below, but rather the prediction in *Elk* that Indians could be made citizens was in fact borne out by an Act of Congress in 1924. Every court that has had occasion to rule on the matter has held that Reservation Indians are citizens. See p. 9, *supra*.

III. There Is No Important Question of Federal Law.

Certainly it is important that American Indians be accorded the full rights possessed by other citizens. Their special position within the American political process is a direct result of the history of this country in which they and not the white settlers were the original inhabitants. In return for the transfer of most of this country to the whites, the Indians have retained as a *quid pro quo* certain rights and privileges. This is small payment indeed for what has been given up. It is only in Petitioners' "Alice in Wonderland" view of this world that the American Indian, whose life span is shorter, whose level of education and income are substantially less and whose level of unemployment is eight times higher than that of his White brother, could ever be considered a "most favored citizen" (Petition, page 17).

There are, indeed, many propositions — including those we consider "self-evident" — that are "important". But that does not make them *issues* worthy of this Court's consideration. Thus, the right of the majority to govern is an important Federal question, but this Court has long laid to rest any doubt that the law stands behind the majority and a review in this case is not required or appropriate to consider Petitioners' dissenting view. *See: Baker v. Carr,*

369 U.S. 183 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Lucas v. The Forty-fourth General Assembly*, 377 U.S. 713 (1964).

The thrust of Petitioners' argument is that the majority has no right to govern. Their inclusion of the recently filed complaint seeking to reapportion Apache County (Appendix D) is designed to show how Indians plan to "take over" the County. What the complaint and the history of Apache County really show is that a minority has held sway for many years.* Nor is it even certain that that will change in the future. In the same election in the same area in which Respondent was elected, an Anglo candidate for the Arizona House of Representatives defeated a Navajo candidate. Thus, Petitioners' fear of domination by a majority is not only wrong in principle but it is also too remote and speculative to warrant consideration by this Court in any event.

In short, Petitioners are asking this Court to declare that they, as a minority in Apache County, have an individual right to govern even when they lose an election and that their asserted right presents an important Federal question. What they have presented, however, is not a "question" at all, let alone an "important Federal question". Rather, it is an absurd hypothesis rejected by this Court and every other court in the land and is unworthy of further consideration.

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*At page 8 of their Brief, Petitioners state that according to the 1970 Census of Population (Pl. Ex. 2), approximately 75% of the people in Apache County are "Reservation Indians". The 1970 Census data, however, shows only that 75% of the people in Apache County are "Indians"—not necessarily "Reservation Indians".

CONCLUSION

For the reasons stated above, Respondent prays that the Petition for a Writ of Certiorari should be denied.

December 27, 1973

PAUL F. ECKSTEIN
222 North Central Avenue
Phoenix, Arizona 85004
Attorney for Respondent

Of Counsel:
JACK E. BROWN
GEORGE P. VLASSIS
LAWRENCE A. RUZOW
BROWN, VLASSIS & BAIN
222 North Central Avenue
Phoenix, Arizona 85004

(Appendix Follows)

Appendix

State of Arizona
31st Legislature
1st Regular Session

SENATE

S.B. 1310
INTRODUCED
February 13, 1973

Introduced by Senators Corbet, Turley, Rottas, Baldwin

AN ACT

RELATING TO COUNTIES; PROVIDING FOR CREATION OF A NEW NAVAJO COUNTY; PROVIDING FOR A COUNTY COMMISSION TO ORGANIZE SUCH COUNTY; COMBINING GRAHAM AND GREENLEE COUNTIES INTO GRAHAM-GREENLEE COUNTY; AMENDING SECTIONS 11-103, 11-105 AND 11-107, ARIZONA REVISED STATUTES; REPEALING SECTIONS 11-108 AND 11-111, ARIZONA REVISED STATUTES; AMENDING TITLE 11, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 11-111, AND MAKING AN APPROPRIATION.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-103, Arizona Revised Statutes, is amended to read:

11-103. *Apache county*

Apache county, the county seat of which is St. Johns, is bounded as follows:

Commencing at a point where the boundary line between Arizona and New Mexico intersects the thirty-seventh par-

allel of north latitude, being the northeast corner of this state, thence south along the boundary line between Arizona and New Mexico to a point where the first standard parallel north intersects such boundary line, being the northeast corner of Greenlee county; thence due west of the Black river; thence westerly and down the Black river along the northern boundary of ~~Greenlee and Graham counties to the east line of range twenty three east of the Gila and Salt River Guide meridian; thence north along such range line to the southern boundary line of the Navajo reservation; thence west along such boundary line to the one hundred tenth meridian of west longitude; thence north along such meridian~~ GRAHAM-GREENLEE COUNTY TO ITS INTERSECTION WITH THE EAST BOUNDARY LINE OF GILA COUNTY, WHICH IS THE ONE HUNDRED TENTH DEGREE OF WEST LONGITUDE; THENCE NORTH TO ITS INTERSECTION WITH THE THIRTY-FOURTH DEGREE OF NORTH LATITUDE; THENCE WEST TO ITS INTERSECTION WITH THE WEST BOUNDARY LINE OF THE WHITE MOUNTAIN INDIAN RESERVATION; THENCE NORTH to the thirty-seventh parallel of north latitude; thence east along such parallel to the boundary line between Arizona and New Mexico, the point of beginning, EXCLUSIVE OF ALL LANDS NOW DESCRIBED AS NAVAJO COUNTY PURSUANT TO SECTION 11-111.

Sec. 2. Section 11-105, Arizona Revised Statutes, is amended to read:

11-105. *Coconino county*

Cococino county, the county seat of which is Flagstaff, is bounded as follows:

Commencing at the point where the thirty-seventh parallel of north latitude and the meridian of one hundred ten de-

grees forty-five minutes west longitude intersect; thence south along such meridian of one hundred ten degrees forty-five minutes west longitude to the rim rock of the Mogollon mountains; thence westerly along the rim rock of the Mogollon mountains, and the northern boundary of Gila county to the east line of range seven east, Gila and Salt River Guide meridian; thence north on such east line of range seven to the fourth standard parallel; thence west on the fourth standard parallel to the east line of range five east; thence north on the east line of range five east to the north line of township eighteen north; thence west on the north line of township eighteen north to the Gila and Salt River Guide meridian; thence north on such meridian to the fifth standard parallel; thence west on such parallel to the east line of range two west; thence north on the east line of range two west to a point one mile north of the center of the right of way of the Atchison, Topeka & Santa Fe railroad; thence westerly in a line one mile north of and parallel with the center of such right of way to the meridian one hundred thirteen degrees twenty minutes west longitude; thence north along the meridian line one hundred thirteen degrees twenty minutes west longitude to the point where the meridian line one hundred thirteen degrees twenty minutes intersects the Colorado river; thence up the Colorado river to the mouth of the Kanab wash; thence to Kanab wash and creek to a point where such wash and creek intersects the thirty-seventh parallel of north latitude; thence east along the thirty-seventh parallel of north latitude to the meridian of one hundred ten degrees forty-five minutes west longitude, the place of beginning, EXCLUSIVE OF ALL LANDS NOW DESCRIBED AS NAVAJO COUNTY PURSUANT TO SECTION 11-111.

Sec. 3. Section 11-107, Arizona Revised Statutes, is amended to read:

11-107. *Graham-Greenlee county*

~~Graham~~ GRAHAM-GREENLEE county, the county seat of which is Safford, is bounded as follows:

Commencing at a point on the east line of range eighteen east, six miles south of where the line of the second standard parallel south intersects the eastern line of range eighteen east, being the northwest corner of Cochise county; thence due north on the east line of range eighteen, being the eastern boundary of Pinal and Gila counties, to a point where the east line of range eighteen east intersects the Gila river; thence along the Gila river to the mouth of the San Carlos river; thence up the San Carlos river to a point where the San Carlos river intersects the north line of township one north; thence east along the north line of township one north and along the southern boundary of Gila county to the one hundred tenth meridian of west longitude; thence north along the one hundred tenth meridian west longitude to the Black river; thence up the Black river ~~to the intersection of the Black river with the east boundary of the White Mountain of San Carlos Indian reservation, which is the one hundred nine degree thirty minute meridian of longitude west; thence due south along the east boundary line of the White Mountain of San Carlos Indian reservation, to the southeast corner of the reservation, as established under instructions from the United States surveyor general of Arizona in the year 1883; thence in a south southeasterly direction in a direct line to the highest point of Thumb Butte; thence in a southerly direction along the watershed to the summit of the north end of the Pedoncillo range of mountains; thence in a general southeasterly direction along the summit of such range to~~

~~its intersection with the north boundary line of Cochise county; the point of intersection being the township line between townships eleven and twelve south, Gila and Salt River Guide meridian;~~ IN A GENERAL NORTHEASTERLY DIRECTION TO THE INTERSECTION OF THE CENTER OF THE BLACK RIVER WITH THE FIRST STANDARD PARALLEL NORTH, GILA AND SALT RIVER GUIDE MERIDIAN; THENCE DUE EAST ALONG SUCH FIRST STANDARD PARALLEL TO ITS INTERSECTION WITH THE EAST BOUNDARY OF ARIZONA; THENCE SOUTH ALONG THE EAST BOUNDARY OF ARIZONA TO ITS INTERSECTION WITH THE NORTH BOUNDARY OF COCHISE COUNTY; thence west along the northern boundary line of Cochise county to a point six miles south of where the eastern line of range eighteen east intersects the second standard parallel south, being the place of beginning.

Sec. 4. *Repeals*

Sections 11-108 and 11-111, Arizona Revised Statutes, are repealed.

Sec. 5. Title 11, chapter 1, article 1, Arizona Revised Statutes, is amended by adding a new section 11-111, to read:

11-111. *Navajo county*

NAVAJO COUNTY, THE COUNTY SEAT OF WHICH IS WINDOW ROCK IS BOUNDED BY THE EXTERIOR BOUNDARIES OF THE NAVAJO INDIAN RESERVATION WITHIN THIS STATE, INCLUDING THE HOPI INDIAN RESERVATION AND OTHER LANDS LOCATED WITHIN SUCH EXTERIOR BOUNDARIES.

Sec. 6. *County commission; members; appointment; term; duties; initial board of supervisors*

A. There shall be a county commission of Navajo county, composed of five bipartisan members appointed by the

governor. Commission members shall be residents of Navajo county and shall be appointed to a term expiring on January 1 next following the general election held in 1974.

B. The county commission shall be responsible for the organization of Navajo county.

C. The initial county board of supervisors of Navajo county shall be elected at the general election held in 1974 to serve a term beginning January 1, 1975, and expiring two years thereafter. Thereafter, all county boards of supervisors of Navajo county shall be elected for a term of four years.

Sec. 7. *Appropriation; purpose; exemption*

A. The sum of twenty thousand dollars is appropriated to the county commission of Navajo county to carry out the provisions of this act.

B. The appropriation made pursuant to this section is exempt from the provisions of section 35-190, relating to lapsing of appropriations.

Sec. 8. *Effective date*

The provisions of this act shall become effective on January 1, 1974, except that the provisions of section 3 of this act shall become effective on January 1, 1977.